HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.782 of 2007

Between:

Joint Collector, Kurnool and two others. … Appellants

And

L. Hassan Khan … Respondent

:: J U D G M E N T ::

Counsel for the appellants : Government Pleader for Revenue

Counsel for the respondent : Sri O. Manohar Reddy

24th September, 2007

Per G.S. Singhvi, C.J.

This is an appeal by Joint Collector, Kurnool and two others for setting aside order dated 23-8-2007 passed by the learned Single Judge in WVMP.No.1342 of 2007 and WPMP.No.12788 of 2007 in Writ Petition No.10092 of 2007, whereby he extended ad interim order dated 9-5-2007 till the disposal of the writ petition and dismissed the vacate petition filed by the appellants.

In the writ petition filed by him, the respondent has prayed for quashing order dated 9-4-2007 passed by the Joint Collector, whereby he confirmed orders dated 14-8-2005 and 30-12-2006 passed by Tahsildar/ Mandal Revenue Officer, Dhone, Kurnool District (appellant No.3) and Revenue Divisional Officer, Kurnool (appellant No.2) respectively in the matter of his eviction from the land comprised in

Survey Nos.480/3A and 480/3C of Dhone Village, Kurnool District.

The aforementioned prayer is founded on the respondent's assertion that the land in dispute was purchased by his father through registered sale deed dated 15-8-1919 and after the death of his father, the same was partitioned amongst brothers by means of registered partition deed dated 19-7-1958. He has then averred that the land has been mutated in his name and he is in possession thereof; that respondent No.3 initiated eviction proceedings at the instance of local Member of the Legislature, who wanted to favour M/s. Gayatri Juice Industries; that the action of appellant No.3 was challenged in Writ Petition No.18630 of 2005, which was disposed of by the learned Single Judge on 12-4-2006 by giving liberty to avail the remedy of appeal; that Writ Appeal No.834 of 2006 filed against the order of the learned Single Judge was dismissed by the Division Bench; that after dismissal of the writ appeal, appellant No.2 passed order dated 30-12-2006 whereby he confirmed order dated 14-8-2005 passed by appellant No.3 and that further appeal preferred by him was dismissed by the Joint Collector vide his order dated 9-4-2007.

The respondent relied on the observations made by the learned Single Judge order dated 12-4-2006 and claimed that he cannot be treated as an unauthorised occupant of the public premises and that the orders passed by the three authorities are liable to be quashed because neither of them gave weightage to the fact that the land was purchased by his father in 1919 and he is in possession for last many decades.

While admitting the writ petition on 9-5-2007, the learned Single Judge suspended order dated 9-4-2007 passed by the Joint Collector.

In the counter filed by the non-petitioners (the appellants herein), it has been averred that the land covered by Survey No.480 of Dhone Village is classified as government land (Assessed Waste Dry) as per the Resettlement Register of 1908 (Lands Basic Register); that the vendor of the petitioner's father namely, Smt. Mahaboob Bi did not

have title of the property in question; that sale deed dated 15-8-1919 is fabricated and that the three authorities have concurrently held that the writ petitioner does not have any right over the subject land.

Sri D. Thippe Naik, who filed the counter affidavit, denied the allegations made by the petitioner that the proceedings for his eviction were initiated at the instance of the local Member of the Legislative Assembly, who wanted to favour M/s. Gayatri Juice Industries. The deponent further averred that possession of the subject land, which is classified as government land, has already been taken and the same has been utilised for providing house sites to 1176 poor persons under Urban Housing Programme and Indiramma Housing Programme.

The appellants also filed WVMP.No.1342 of 2007 for vacating interim order. They claimed that possession of the subject land has already been taken over and the same has been allotted to landless poor for construction of houses and that some of them have already started constructing houses.

By the order under challenge, the learned Single Judge dismissed the vacate petition and directed that the interim suspension shall continue until further orders. For better appreciation of the issue raised in the appeal, the order of the learned Single Judge is reproduced below:

> "A similar matter has already been considered and disposed of by this Court and, therefore, this Court is not inclined to vacate the interim order. The order of interim suspension shall continue until further orders in the writ petition.
>
> The WVMP is accordingly dismissed."

Learned Government Pleader for Revenue argued that the very premise on which the learned Single Judge has dismissed the vacate petition namely, decision of the similar case by the Court is erroneous because no such case has been decided so far. He then invited the Court's attention to the averments contained in the affidavits of the parties and the contents of orders dated 14-8-2005, 30-12-2006 and 9-4-2007 passed by the appellants herein, and argued that

the impugned order is liable to be set aside because while passing the ad interim order and the one under challenge in the appeal, the learned Single Judge did not consider the matter in a correct perspective. Learned Government Pleader submitted that even if the learned Single Judge felt that the issue raised in the writ petition merits detailed consideration, he could not have suspended order dated 9-4-2007 ignoring the fact that possession of the land in dispute had already been taken and the same had been utilised for giving house site pattas to 1176 landless poor and construction of houses for poor. Learned Government Pleader also invited our attention to the photographs annexed with the appeal to show that construction of houses for landless poor, who have been identified as beneficiaries under Indiramma Housing Programme, has already started and argued that the order passed by the learned Single Judge without considering the important factors like irreparable injury, balance of convenience and public interest, is liable to be set aside.

Sri O. Manohar Reddy, learned counsel for the respondent fairly stated that he cannot give particulars of any similar case decided by the learned Single Judge, but tried to defend the opening sentence used in the impugned order by saying that the same is perhaps referable to order dated 12-4-2006 passed in Writ Petition No.18630 of 2005. Learned counsel then argued that his client cannot be deprived of the property, which was purchased by his father as early as in 1919 and that the learned Single Judge did not commit any error by confirming the ex parte interim order. Sri Reddy emphasised that his client's family is in possession of the property for the last ninety years and argued that orders dated 14-8-2005, 30-12-2006 and 9-4-2007 passed by the appellants are liable to be declared nullity because appellant No.3 did not have the jurisdiction to initiate proceedings for eviction by treating the respondent as unauthorised occupant. Learned counsel submitted that the photographs produced with the memorandum of appeal cannot be taken into consideration because

the same were not placed before the learned Single Judge.

We have thoughtfully considered the entire matter. It is trite to say that while deciding an application for interim relief or temporary injunction/stay, the Court must feel convinced that the petitioner/applicant has been able to make out a strong prima facie case, that he/she will suffer irreparable injury if the interim order/injunction is not granted in terms of the prayer made and that the elements of balance of convenience and public interest justify grant of stay/injunction. All these factors must conjointly and cumulatively exist in favour of the grant of stay/injunction in terms of the prayer made by the petitioner/applicant and the existence of one or more of these factors cannot justify exercise of judicial discretion in his/her favour if the other factors are against the grant of injunction/stay.

It is also settled law that an order/injunction passed by the court must reflect objective application of mind by the court to the relevant factors. This requirement will apply with greater rigour when the court is called upon to pass final order on the application/petition for injunction or stay and/or when the court is required to decide an application filed by the opposite party for vacating the ad interim order of status quo, injunction or suspension of the proceedings/order under challenge in the main case. To put it differently, an order confirming the ad interim stay/injunction or an order deciding the vacate petition must contain reasons, howsoever briefly, indicating the objective consideration of all the relevant factors. The orders of injunction/stay passed by the Tribunals and other adjudicatory forums created under the legislative instruments enacted by the Parliament and State Legislatures must also satisfy these requirements.

We shall now consider whether the order under challenge satisfies the requirement of a speaking order and whether the learned Single Judge was justified in dismissing the vacate petition filed by the appellants and continuing the interim suspension until further orders.

The admission of the writ petition filed by the respondent can

reasonably lead to an inference that he has been able to make out a prima facie case. However, that by itself did not justify continuation of ad interim order dated 9-5-2007 and the learned Single Judge committed a serious error by dismissing the vacate petition without even adverting to the pleadings of the parties and without considering the other factors i.e. irreparable injury, balance of convenience and public interest. The reason-less order, which is subject matter of challenge in the appeal, does not contain any indication of the application of mind by the learned Single Judge to the averments contained in the affidavit filed on behalf of the appellants, which disclose that the disputed land is classified as government land in the Resettlement Register prepared in the year 1908 and possession thereof had been taken by the Mandal Revenue Officer and that after taking possession, the authorities distributed house site pattas to the members of economically weakest section of the society and some of them started constructing houses. The photographs annexed along with the memorandum of appeal (the genuineness of the photographs has not been questioned by the respondent) show that construction of large number of small houses is in progress. The respondent has not controverted the fact that these houses are being constructed in furtherance of Indiramma Housing Programme and are meant for landless poor. Non-consideration of these important facts by the learned Single Judge shows that the order under challenge has been passed without application of mind to the most important factors i.e. irreparable injury, balance of convenience and public interest. We are sure, if the learned Single Judge had taken note of the fact that the land in dispute has already been utilised for grant of house site pattas to the landless poor persons and they have started constructing houses and that a portion thereof has been utilised for constructing houses under an important project undertaken by the State for providing houses to the poorer sections of the society, he would have definitely concluded that the factors like irreparable injury, balance of

convenience and public interest are against the continuation of interim suspension.

In our considered view, by suspending the operation of order dated 9-4-2007 passed by the Joint Collector, this Court cannot deprive hundreds of landless poor persons, who are not even parties to the writ petition, of their right to possess small parcels of land and the benefit of the housing project undertaken by the State Government for poorest of the poor.

In the result, the appeal is allowed and the order under challenge is set aside. Consequently, WVMP.No.1342 of 2007 filed by the appellants shall stand allowed and interim order dated 9-5-2007 passed in WPMP.No.12788 of 2007 shall stand vacated.

As a sequel to disposal of the appeal in the manner indicated above, WAMP.No.1565 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, C.J.

24th September, 2007

C.V. NAGARJUNA REDDY, J.

ARS